

**AN ORDINANCE  
BY COUNCILMEMBER CLAIR MULLER**

**03-0 -0194**

**AN ORDINANCE CONFIRMING THE APPLICATION OF DEVELOPMENT IMPACT FEES TO BE PAID IN CONNECTION WITH THE TWO ORDINANCES GRANTING SITE PLAN AMENDMENTS FOR PROPERTY LOCATED AT 3060 PEACHTREE ROAD N.W. SUCH THAT SAID DEVELOPMENT IMPACT FEES WILL FUND THE PARTIAL COST OF PUBLIC FACILITIES IMPROVEMENTS IN THE IMMEDIATE VICINITY ASSOCIATED WITH SAID SITE PLAN AMENDMENTS, AND FOR OTHER PURPOSES.**

WHEREAS, the City of Atlanta Development Impact Fee ordinance (hereinafter, the "Impact Fee Ordinance") was adopted by the City Council on March 18, 1993, and approved by the Mayor on March 26, 1993; and

WHEREAS, Section 19-1004 (2) states that one of the purposes of the Impact Fee Ordinance is to ensure that new land development shall bear a proportionate share of the cost of new public facilities, including transportation facilities, necessary to serve such growth; and

WHEREAS, the current transportation Level of Service (LOS) on West Paces Ferry Rd. is rated "F" and approved future developments will have further detrimental impact on the movement of traffic on West Paces Ferry Rd. and the immediate surrounding area; and

WHEREAS, the City recognizes the need to confirm that the construction of street improvements, sidewalks and traffic calming devices in the immediate area will be funded in part by an amount equal to the amount of development impact fees paid for the development of 3060 Peachtree Road as proposed in the site plan amendments known as Z-02-02/Z-84-52 and Z-02-03/Z-84-52, and will be undertaken contemporaneous with the construction of said projects.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS  
AS FOLLOWS:**

**SECTION ONE:** The Commissioner of the Department of Planning and Community Development is directed to use any Transportation Impact Fees paid in connection with the development authorized by site plan amendments as stated in Z-02-02/Z-84-52 and Z-02-03/Z-84-52, for the purpose of funding the costs associated with the projects aimed at mitigating existing traffic congestion, including but not limited to those listed in Exhibit A.

**SECTION TWO:** The projects listed in Exhibit A may be implemented, subject to the approval of the Commissioner of the Department of Planning and Community Development, by the developer of the projects authorized by the site plan amendments as stated in Z-02-02/Z-84-52 and Z-02-03/Z-84-52, and any associated cost may be applied toward the Transportation Impact Fees to be paid in connection with such development.

**SECTION THREE:** The sequence in which the projects listed in Exhibit A are to be constructed shall be determined as a component of the study to be funded according to the provisions as provided in Exhibit B, provided however that the initial project to be constructed shall begin no later than sixty (60) days following the issuance of the first certificate of occupancy for either of the projects associated with the development authorized by the site plan amendments as stated in Z-02-02/Z-84-52 and Z-02-03/Z-84-52.

**SECTION FOUR:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

## **EXHIBIT A**

1. Construct sidewalks within immediate vicinity of Buckhead Plaza.
2. Improve intersection of Peachtree Road and Pharr Road by providing a sheltered left turn lane for north bound traffic on Peachtree Road.
3. Construct other improvements identified in the infrastructure study that is being funded by the developers of the two subject site plan amendments according to the provisions of Exhibit B.

**EXHIBIT B**

**(SEE ATTACHED DOCUMENTS)**

**EXHIBIT B**

**(SEE ATTACHED DOCUMENTS)**

**Zoning Conditions for Buckhead Plaza**

**Applicable to  
Z-02-02/Z-84-52**

**and**

**Z-02-03/Z-84-52  
January 7, 2003**

1.9.03

EPB

Final

*Rec'd 8 Jan.  
Buckhead Plaza*

1. Landscaping will be provided as indicated on the applicable site plans, landscape plans and written conditions as hereinafter defined for each of the above zoning applications. Balconies, roof gardens, and similar non-ground level spaces shall not be included in calculating minimum landscape requirements. Pervious paving material will be utilized where feasible. Pervious joints shall be provided between all pavers on grade. Buffer areas and protected trees shall be marked using temporary chain link construction fencing no less than four feet in height prior to and maintained during the period of construction. All erosion control measures shall be installed outside any undisturbed buffer.
2. The applicant will become a member of the Buckhead Area Transportation Management Association (BATMA) prior to the issuance of a certificate of occupancy for the first building in the development and will pay its pro rata contribution to the Buckhead Community Improvement District to fund BATMA (that percentage of the BCID contribution which goes to BATMA) at such time as BATMA shuttle service is provided to the property, even if the property is not within the Buckhead Community Improvement District, unless the property is at that time located within another Community Improvement District. Prior to shuttle service being provided by an off-site entity such as BATMA, the applicant will provide or participate with other property owners to provide a shuttle service between the Buckhead Plaza development and the Buckhead MARTA station, beginning at such time as a minimum of 12 persons in the first occupied building sign up to use such service in the morning and afternoon peak hours.
3. The applicant will utilize its best efforts to assist the neighborhood in obtaining a left turn lane or other traffic improvement measures for northbound traffic on Peachtree Road, turning west on Pharr Road.
4. The applicant shall provide the maximum of either (a) 25 bicycle parking spaces or (b) the number of bicycle parking spaces required by the City of Atlanta based on the number of automobile parking spaces, whichever number is greater. The number of bicycle parking spaces installed shall meet the City's minimum requirements during each phase of the development. These spaces shall be located as close as practicable to the buildings while, in the developer's sole discretion, maintaining the architectural integrity of the buildings and their landscaping and hardscaping schemes.

5. Tour buses and limousines will be prohibited from parking on the drive between the Buckhead Plaza development and Pharr Road, subject to the easement rights of various parties in such drive.
6. Walkways and other connective measures will be designed to connect and unify the development with existing and planned walkways within the overall Buckhead Plaza PD-OC district to facilitate pedestrian movement and internal vehicle movements and parking as indicated on the site plan.
7. At such times as access to sidewalks which are located along the Peachtree Road frontage are temporarily closed due to construction of this development, the applicant shall comply with Atlanta City Codes regarding sidewalk closure, including, in particular, the signage requirements of Section 138-65 and 138-67.
8. All sanitary sewage from the property will be directed or pumped directly into the Peachtree Outfall Sewer line on the Peachtree Road frontage of the property. The applicant shall not transfer sanitary sewage to another sewer basin unless the requirements of the First Amended Consent Decree (Section VIII.B.8-Capacity Certification Program) to assure adequate sewer capacity are satisfied and signed off by the Commissioner of Public Works or appropriate commissioner.
9. All stormwater detention facilities shall be located below grade.
10. No building permit (other than a permit limited to grubbing, grading, the installation of new or changes in modifications to existing site infrastructure, including alteration of existing interior roadways) shall be issued permitting the construction of any buildings without written assurance from the City of Atlanta's Commissioner of Public Works that sewer capacity is available and reserved for the site, or will be available to and reserved for the site prior to the completion of construction. Under no circumstances will a Certificate of Occupancy or temporary Certificate of Occupancy issue unless sewer capacity is confirmed to be available and reserved for the site in writing by said Commissioner.
11. All dumpsters and service facilities shall be screened and shall be located as set forth on the additional conditions and/or site plan.
12. All exterior lighting shall be designed, shielded and constructed so as to prevent light spill onto adjoining residential areas.
13. No exterior loudspeakers or amplified music or sound systems of any kind shall be used in the development with the exception that one restaurant located in the first floor of the building facing Peachtree Road may have external speakers for music facing Peachtree Road, if and when such restaurant has outdoor tables to provide background music of a type typically found in restaurants in similar developments. The volume of any such music shall be consistent with the volume at which the music is transmitted in the interior of the restaurant.

14. All restaurants shall be required to install grease traps or some other device approved by the City and Fulton County that substantially mitigates the discharge of untreated grease into the public sewer system. The grease traps or other approved devices must be adequately maintained and inspections regularly scheduled.
15. Authorized uses are limited to those set forth on the Site Plan as further limited by these conditions. Said uses shall be located only where indicated on said plan. There shall be no adult entertainment uses. Restaurant uses shall not include fast-food establishments, except that two (2) such establishments shall be authorized provided they meet each of the following criteria:
- (i) Are located adjacent to other retail uses and not in a stand-alone or out-parcel building;
  - (ii) Do not exceed 2000 square feet of total interior heated space; and
  - (iii) Close by 12:00 a.m. each day.

For the purposes hereof, a fast-food establishment shall be an operation which is typically found as a stand-alone restaurant with drive-through windows such as McDonalds, Burger King, Wendy's or Arby's and shall not include coffee shops, delicatessens or bakeries. Drive-throughs, except those for financial institutions, are specifically prohibited. Except as otherwise specifically provided herein, no establishments shall be allowed which hold a license for alcohol consumption on the premises except eating and drinking establishments. The primary purpose of any said eating and drinking establishment shall be for food consumption and each said establishment shall derive at least 50% of its total annual gross food and beverage sales from the sale of prepared meals or food. Notwithstanding these prohibitions, two (2) establishments not meeting these eating and drinking establishment requirements shall be authorized provided they meet each of the following criteria:

- (i) Face Peachtree Road or the plaza between the applicant's development and the One Buckhead Plaza office building or are located within and operated as an integral part of a hotel;
- (ii) Are properly licensed as and meet every requirement for a nightclub with the City of Atlanta as defined in Code Section 10-1 of the City's Alcoholic Beverages Code;
- (iii) Have no more than 2000 square feet of total interior heated space excluding any outdoor seating area, whether covered or uncovered, which outdoor seating area shall not exceed 750 square feet; and
- (iv) Have music provided only within the interior of the premises and only by acoustical instruments such as a piano.



The provisions of this paragraph 15 shall apply separately to each of the zoning cases covered by these conditions.

16. The development shall comply with existing City of Atlanta ordinances with regard to hours of construction and noise limitations. During construction, all construction vehicles will be parked on-site and not on the surrounding public streets. Also, during the period of construction, the developer will notify the presidents of each of the SPI-9 neighborhoods, the president of the Peachtree Heights West Civic Association, the president of Habersham Estates Condominium Association, the property manager of One Buckhead Plaza, and the Chair of the Zoning Committee of NPU-B of a contact name and telephone number which will be answered or on which messages may be left 24 hours a day, 7 days a week regarding problems with the construction.
17. The applicant shall draft, have introduced and support appropriate legislation that will require that all transportation impact fees generated from this development will be used to study and/or mitigate traffic in the area surrounding the development.
18. The applicant will request that an ordinance be introduced to change the City of Atlanta Comprehensive Development Plan designation of the property from High Density Commercial to Mixed Use (maximum FAR of 3.0), consistent with applicant's proposed development.
19. These conditions of zoning shall be binding upon all successors and assigns of the applicant. The subdivision, sale, or partition of all or any part of this property shall not alter the obligation of all owners of the property to comply with these conditions of zoning.
20. The applicant will not request any administrative site plan amendment which seeks to change any of the conditions contained herein without first giving notice of such request to the president of each of the SPI-9 neighborhoods, the president of the Peachtree Heights West Civic Association, the president of Habersham Estates Condominium Association, the property manager of One Buckhead Plaza, and the Chair of the Zoning Committee of NPU-B. However, the applicant will have the right to request administrative changes in the site plan without such notification so long as such changes are required to comply with technical permitting requirements of the City of Atlanta and do not: (a) increase the height in stories or square footage of any building or the number of parking spaces; (b) change any of the uses or location of said uses specified on the site plan; (c) decrease any exterior setback or the amount of landscaped area; (d) materially reduce public access or public spaces; or (e) otherwise materially alter these conditions.
21. All of these narrative conditions will be attached to the final site plan filed with the City of Atlanta.

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The following additional conditions shall apply only to Z-02-02/Z-84-52:

1. The property shall be developed in accordance with: (a) the site plan entitled "Buckhead Plaza Mixed-Use Development Scheme 'A'" prepared by the Preston Partnership, LLC and Corcoran Nelson Nardone Associates, Inc. dated August 20, 2002, revised October 23, 2002; the "Landscape Plan Scheme 'A'" prepared by the Preston Partnership, LLC, revised October 23, 2002; and the Plaza Level Scheme A Site Plan" prepared by Corcoran Nelson Nardone Associates, Inc. dated October 10, 2002, or (b) the site plan entitled "Buckhead Plaza Mixed-Use Development Scheme 'B'" prepared by the Preston Partnership, LLC and Corcoran Nelson Nardone Associates, Inc. dated August 20, 2002, revised October 14, 2002; the "Landscape Plan Scheme 'B'" prepared by the Preston Partnership, LLC, dated October 14, 2002.
2. The buildings' architectural style and materials shall be substantially similar to the rendering by The Preston Partnership, LLC and Corcoran Nelson Nardone Associates, Inc. dated August 20, 2002.
3. The parking deck northern facade shall have architectural style, materials and layout that are substantially similar to the rendering entitled "Plaza Elevation Scheme 'A-2'" by Corcoran Nelson Nardone Associates, Inc., dated October 10, 2002, whether the site is developed under Scheme A or Scheme B.
4. Building sizes and uses shall be as follows:
  - (1) Office Building:
    - (a) Seven (7) stories in height ( $\pm$  124 feet).
    - (b) Ground floor containing 27,822 gross square feet of retail including restaurants.
    - (c) Floors two through seven containing 165,046 gross square feet of office use.
  - (2) Residential Building:
    - (a) Nineteen (19) stories in height ( $\pm$  216 feet).
    - (b) 270 residential units.
    - (c) 288,000 gross square feet.
  - (3) Parking Deck:
    - (a) Eight (8) levels with six (6) above grade.

- (b) 13,640 gross square feet of retail space and 1,061 parking spaces under Scheme A or 7,000 gross square feet of retail with rights to build an additional 5,968 gross square feet of retail and 994 parking spaces under Scheme B.

5. The combined residential/non-residential FAR of the development will not exceed 2.61.
6. Prior to issuance of the first building permit for development of the applicant's property, the applicant shall pay the sum of \$40,000.00 into an account to be established by the Buckhead Action Committee to be used for a study to suggest traffic mitigation measures, and, to the extent of any excess funds, to fund such mitigation measures, on streets within the residential communities most directly impacted by applicant's development.

The following additional conditions shall apply only to Z-02-03/Z-84-52:

1. The property shall be developed in accordance with the site plan entitled "West Paces Ferry Rd. Mixed Use Project", prepared by The Preston Partnership, LLC, dated January 3, 2003, and marked received by the Bureau of Planning on January 6, 2003.
2. As depicted on the site plan referred to in 1. above, a linear landscape area of sufficient depth and quality to support mature trees shall be installed along the entire western boundary of the property at a width ranging from 20 feet to 30 feet, with a minimum width of not less than twenty feet, measured from the top of the existing retaining wall. Landscaping shall be installed in accordance with the Landscape Plan entitled "West Paces Ferry Road and Western Buffer Zone Tree Planting Plan", prepared by The Preston Partnership, dated January 7, 2003, and marked received by the Bureau of Planning on January 8, 2003. The intent of this Landscape Plan is to assure the replication of the plant materials and density of planting that now exist along the westernmost edge of the site. Said landscape area shall be planted with mature trees of evergreen and deciduous species. The number, location, and diameter at breast height of plant material shall be as is set forth in the Landscape Plan referred to in this Section 2. The 8 foot tall masonry screen wall specified on the site plan within the Western Buffer Zone shall be installed by the applicant during or prior to installation of the landscape materials at the discretion of the Peachtree Heights West Civic Association. Any trees removed along the West Paces Ferry Road street frontage will be replaced with willow oaks of a caliper of not less than six inches as is shown on the Landscape Plan, except for those trees at entry points that are designated on the Landscape Plan as a different species.
3. The buildings' architectural style, materials and layout shall be substantially similar to the renderings by The Preston Partnership, entitled "Rendering from west along W. Paces Ferry Rd." and "Rendering from east along W. Paces Ferry Rd.", both of which are dated January 3, 2003, and marked received by the Bureau of Planning on January 6, 2003. The western facade shall have architectural style, materials and layout that are substantially similar to the elevation by The Preston Partnership, entitled "West facing

building elevation", dated January 3, 2003, and marked received by the Bureau of Planning on January 6, 2003. Applicant further agrees that all architectural and landscape architectural design elements of the Planned Development will be sympathetic in form, color, and texture with that of the existing One Buckhead Plaza. Applicant will establish an advisory design review committee that will include the NPU-B Zoning Committee Chair and President of Peachtree Heights West Civic Association, or their designees, and shall be notified of and provided an opportunity to participate in and make recommendations regarding development of the final building designs and façade materials.

4. Buckhead Plaza principal uses shall be as specified on the site plan and all applicable conditions. Commercial uses may include retail uses, grocery store, and restaurants, subject to all applicable conditions. Development permission for each use shall not exceed the intensities and maximum height that are shown on the site plan.
5. All deliveries, garbage collection, and other loading activities ("loading zone activities") shall be conducted inside the loading zone areas specified on the site plan, which areas shall be constructed utilizing materials designed to muffle noise and which areas shall contain doors that shall remain closed during all loading zone activities so as to eliminate noise associated with these activities. No loading zone activities whatsoever for the loading zones along the western boundary of the site shall occur between the hours of 8:00 p.m. and 8:00 a.m.
6. Applicant will provide an operable access-controlled pedestrian gate from the subject property into the Habersham Estates property, provided that the applicant shall assume no liability for the use and operation of the pedestrian gate and the Habersham Estates condominium association shall indemnify the applicant from and against injury. Applicant will install a crosswalk across the access road from the pedestrian gate to the sidewalk. Applicant further agrees that it will grant an easement to the Phant Court North Condominium Association at their request, upon their indemnification of the applicant from and against injury, and from and against damage to the existing retaining wall, so that they can construct their own pedestrian entry into Buckhead Plaza.
7. The combined residential/non-residential FAR of the development shall not exceed 2.96.
8. Top decks of parking facilities will have tree planters and trellises with appropriate plant materials to improve the view from the adjoining buildings.
9. Applicant agrees that during and after construction, no devices used for landscape maintenance or the cleaning of drives or parking decks shall be allowed to operate past 8:00 p.m., or before 8:00 a.m. on weekdays and before 10:00 a.m. on Saturdays and Sundays.
10. All dumpsters and trash compactors shall be located either within the interior loading dock area of the grocery store or within the enclosed service area of the parking deck.

11. General Condition Number 13 above notwithstanding, the hotel and housing operators are permitted to have amplified music in the pool deck and pool area in order to provide background music of a type typically found in pool areas in similar developments. The volume of any such music shall be consistent with the volume at which the music is transmitted in the interior of the hotel bar and restaurant.
12. Four housing units in the development on the property will be set aside for public safety (police and fire) personnel at a rate that is 80 percent of the market rate for the units. The availability of these units shall be announced through the Chief of the Atlanta Police Department and the Chief of the Atlanta Fire Department and shall then be available on a first-come, first-serve basis to public safety personnel. Any unit not rented by public safety personnel within three months of such announcement may be released for rental to the general public at normal market rates.
13. Prior to issuance of the first building permit for development of the applicant's property, the applicant shall pay the sum of \$60,000.00 into an account to be established by the Buckhead Action Committee to be used for a study to suggest traffic mitigation measures, and, to the extent of any excess funds, to fund such mitigation measures, on streets within the residential communities most directly impacted by applicant's development.
14. The pedestrian access area at the northeast corner of the site (adjoining Chops) will be designed to assure ease of pedestrian access to Chops, One Buckhead Plaza, the hotel, and the new buildings to the west. An elevator will be installed to facilitate ingress/egress to Chops and One Buckhead Plaza, and the applicant will work with the owner of One Buckhead Plaza to facilitate the pedestrian interconnectivity within the site.
15. The hotel operated in Building F shown on the site plan shall be a luxury class hotel having an architectural style, materials and layout substantially similar to that shown in the rendering prepared by Rabun, Hogan, Ota, Rasche, Architects, entitled "Perspective View, Buckhead Plaza Hotel, Atlanta, Georgia, 12.05.02, attached hereto and marked Attachment A, or if a five-star hotel, having an architecture, materials and layout of the same aesthetic quality as shown in such attached rendering.